

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**APEAL FROM ORDER NO. 42 OF 2015
WITH CA/4795/2015 IN AO/42/2015**

**RAJENDRA NARAYAN CHAVAN AND OTHERS
VERSUS
NAMDEO BALU CHAVAN**

...
Advocate for Petitioners : Mr. Dhanure Bramhanand M.
Advocate for Respondent : Mr. Pramod Patil

...
CORAM : S. V. GANGAPURWALA, J.

DATE : 24th August, 2015

PER COURT :

1. The appellants are the original defendants. The suit for injunction filed by the present respondent came to be decreed and injunction is clamped, restraining the defendants not to obstruct respondent-plaintiff in its possession. The defendants filed an appeal before the District Court along with application for temporary injunction. The application for temporary injunction is rejected. Being aggrieved thereby, the present appeal.

2. Mr. Dhanure, the learned counsel for the appellant strenuously contends that the Court has failed to consider that in the year 1989, mutation was effected with consent of the all the parties. After death of the father of the present appellants, names of the present appellants were recorded as owners and possessors of the suit property. Learned counsel submits that there is no iota of evidence in favour of the plaintiff to even remotely suggest that the plaintiff is possessor of the suit

property. Though initially it is shown that the suit property was allotted by the Government to the grandfather of the appellants and respondent, however, subsequently, with the consent of all parties, property stood in the name of the father of the present appellants. The revenue record justifies the said fact. However, the same is not considered by the lower appellate court nor by the trial Court.

3. Learned counsel submits that the appellants are the owners, in possession of the suit property. As such, stay be granted to the impugned order.

4. Learned counsel for the respondent supports the order.

5. I have considered the submissions.

6. After recording of evidence, the trial Court has decreed the suit. The appeal has been filed on 01.08.2014. Right since 01.08.2014, the order of injunction is in force. Be that as it may, the Court at this stage, is required to only consider the prima facie case. The Court would be loath in interfering with the discretion exercised the Court below. At this stage, plausible reasoning has been given by the lower appellate Court. The same needs no interference, considering the discussion of the facts about mutation entry, extract No.1180 and further mutations entries.

7. In the light of above, the impugned order needs no interference. Appeal from Order is accordingly disposed of.

8. Needless to state that the observations made by the lower appellate Court and this Court are only prima facie in nature. Lower Appellate Court shall decide the appeal on its own merits, on re-appreciation of evidence, on its own merits.

9. In case paper book is not prepared, the appellant may file private paper book within a period of eight weeks. Upon submission of the private paper book, the lower appellate court shall endeavour to decide the appeal, expeditiously, preferably within nine months from the date of submission of paper book.

10. Civil Application also stands disposed of. No costs.

(S. V. GANGAPURWALA, J.)

JPC